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August 20, 2004

VIA FACSIMILE & U.S. MAIL

Michael E. Kerr
Compliance Officer
Share Financial Services, Inc.
14677 Midway Road
Suite 100
Addison, Texas 75001

Re: Request for an Interpretive Opinion Regarding an Exemption from
Registration under Section 409.2-202(14), RSMo Cum. Supp. 2003
File No. 2004-00710; IO-01-04

Dear Mr. Kerr:

In your letter of June 22, 2004, you requested that the Commissioner of Securities provide an interpretive opinion in regards to the following issue: (1) whether your Texas broker-dealer firm may, pursuant to section 409.2-202(14), RSMo Cum. Supp. 2003, legally offer church bonds from an out-of-state issuer to Missouri residents when the firm has previously sold exempt offerings to those residents, those residents have expressed to the firm an interest in future offerings, and the firm would not use any mailings to offer the church bonds to the Missouri residents; (2) whether a filing must be made with the Securities Division before such an exemption can be claimed; and (3) whether the provisions of section 409.2-201(7)(A), RSMo Cum. Supp. 2003, must also be complied with in the event the offering qualifies for a section 409.2-202(14) registration exemption. The Commissioner's following interpretive opinion is authorized by section 409.6-605(d) of the Missouri Securities Act.

The Availability of § 409.2-202(14)

The first issue regards Share's ability to avail itself of the exemption found under section 409.2-202(14), RSMo Cum. Supp. 2003, under the facts noted below. Section 409.2-202(14) provides a transaction exemption from the Act's registration and advertising filing requirements for those sales or offers to sale that meet certain conditions.

First, section 409.2-202(14)(A) limits the transaction to twenty-five purchasers in this state during any consecutive twelve-month period.¹ It is important to note that the wording

¹ Section 409.2-202(14)(A) excludes from the calculation of twenty-five purchasers those purchasers listed in section 409.2-202(13). Section 409.2-202(13) exempts from registration the following transactions: "A sale or offer to sell to: (A) an institutional investor; (B) A federal covered investment adviser; or (C) Any other person exempted by rule adopted or order issued under this act." Section 409.2-202(13), RSMO Cum. Supp. 2003.

of the exemption does not contemplate a calendar or even fiscal year, but instead requires that the twelve-month calculation be made from the date of that last purchase. In this case, you have confirmed that, in any offering conducted in Missouri, the number of Missouri purchasers would not exceed this statutory limit of twenty-five within the consecutive twelve-month period.

Second, section 409.2-202(14)(B) prohibits the use of general solicitations or general advertising in connection with the offering or sale of the securities pursuant to this exemption. The Missouri Securities Act of 2003 defines neither “[g]eneral solicitations” nor “general advertising.” However, 15 CSR 30-54.130(2) specifies that “general solicitation under section 409.2-202(14)(B), RSMo does not include an offer to sell or sale of securities where the offeror or the seller is the issuer or an agent of the issuer and the offeror or seller has a familial or substantive preexisting relationship with the offeree or purchaser.”

As the term indicates, this relationship must not be formed as a result of the immediate offering; it must be preexisting.² On this point, it is important that “there be sufficient time between establishment of the relationship and an offer so that the offer is not considered made by general solicitation or advertising.”³ Also, the substance of the relationship must be such that the issuer or person acting on its behalf is “aware of the financial circumstances or sophistication of the person with whom the relationship exists or that otherwise are of some substance and duration.”⁴

You have confirmed that Share would not generally solicit people in Missouri through a broadly based distribution of sales literature regarding the church bonds. Instead, the only contemplated offerees would be those individuals to whom Share has sold interests before, some of whom may have been customers to Share’s registered representatives for years.⁵ Additionally, you have confirmed that, as a matter of course in offering securities, Share gathers sufficient information to conclude that an offering is suitable for the particular offeree. Further, your correspondence stipulates that, if the exemption were available, Share’s registered representatives would telephone only those preexisting Missouri customers who had expressed an interest in future offerings from Share. Share’s registered representatives would then provide a prospectus only to those customers who requested one.

Third, section 409.2-202(14)(C) prohibits a commission or other remuneration from being paid or given, directly or indirectly, to a person other than Missouri registered broker-dealers or agents for soliciting prospective purchasers in this State. Share is a broker-dealer registered under the Missouri Securities Act of 2003. In your correspondence, you represent that only your registered representatives will contact the Missouri customers.

Finally, section 409.2-202(D) requires that the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment. You have confirmed that any securities offered would be offered only as

² E.F. Hutton & Co., SEC No-Action Letter, 1985 WL 548507 at *4 (Apr. 19, 1985).

³ E.F. Hutton & Co., SEC No-Action Letter, 1985 WL 548507 at *5 (Apr. 19, 1985).

⁴ Mineral Lands Research and Mktg. Corp., SEC No-Action Letter, 1985 WL 55694 at *2 (Nov. 4, 1985).

⁵ Compliance with the exemption would require that all offerees have a preexisting substantive relationship with Share or the issuer and that the relationship is not formed as a result of the current offering. You have confirmed that this would be the case in any potential offering.

investments and that the customers, to whom Share has sold before, would be purchasing with investment intent.

Under the above contemplated facts, the Commissioner is of the opinion that Share could, pursuant to section 409.2-202(14), RSMo Cum. Supp. 2003, legally offer church bonds to those Missouri residents.

Filing for § 409.2-202(14)

The second issue was whether a filing must be made with the Securities Division before such exemption can be claimed under section 409.2-202(14), RSMo Cum. Supp. 2003. That section contains no language that states a filing with the Securities Division is necessary before an offeror may employ this transaction exemption. Therefore, the Commissioner is of the opinion that Share would not have to make a filing with this office in order to avail itself of this specific exemption.

Complying with §§ 409.2-201(7) & 409.2-202(14)

The third issue was whether Share would have to comply with the provisions of section 409.2-201(7)(A), RSMo Cum. Supp. 2003, even if it qualified for a section 409.2-202(14) registration exemption. Generally speaking, section 409.2-201(7) provides a registration exemption for securities issued by nonprofit issuers, e.g., those organized and operated for religious or charitable purposes.

Section 409.2-202(14) exempts “[a] sale or an offer to sell securities of an issuer, if part of a single issue.” By its plain wording, then, section 409.2-202(14) only requires that the security be part of a single issue. There is no other language limiting or qualifying the sort of securities that may be offered under the exemption. Nor does section 409.2-202(14) qualify the availability of the exemption upon a filing pursuant to another exemption. Therefore, to the extent Share complied with the restrictions of section 409.2-202(14), the Commissioner is of the opinion that Share would not have to comply with the filing requirements of section 409.2-201(7)(A) in order to avail itself of the exemption of section 409.2-202(14).

This opinion is based on the facts presented in your correspondence and representations, and should the facts prove to differ from those presented, the opinion of this office may differ.

Sincerely,

Douglas M. Ommen
Commissioner of Securities